BEFORE NANCY XEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

MATTER OF THE
TRANSPORTATION APPEAL OF JERRY
AND AILEEN BROSTEN, FLOYD AND
SANDY QUIRAM AND WILLIAM AND
LYNN HAW, FLATHEAD COUNTY

OSPI 194-91

DECISION AND ORDER

STATEMENT OF TEE CASE

This is an appeal of the decision of the Flathead County Transportation Committee denying a request for an extension to Bus Route #3, Whitefish School District #44, on Spring Prairie Road. The extension was first denied by the Committee on January **22.** 1991. That decision was appealed and came on for hearing before the Flathead County Transportation Committee on March 22, 1991, pursuant to section 20-10-132(1)(d), MCA. Based on comparative safety issues, economic constraints and practice, the Board reaffirmed their denial of January 22, 1991. (Transcript p. 46.) Findings of Fact, Conclusions of Law and Order were issued by a majority of the Committee on May 7, 1991. Dissenting votes were cast by three committee members. Timely appeal of that decision pursuant to section 20-10-132(2), MCA, was made to this Superintendent.

Having reviewed the facts established at the county transportation committee hearing, this State Superintendent now makes the following decision:

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DECISION

The standard of review by the State Superintendent is set forth in ARM 10.6.125. This rule was modeled upon MCA 2-4-704 and the Montana Supreme Court has interpreted the statute and the rule to mean that findings of fact are subject to a clearly erroneous standard of review and that conclusions of law are subject to an abuse of discretion standard of review. Harris v. Bauer, 230 Mont. 207, 749 P.2d 1068, at 1071, 45 St. Rptr. 147, it 151 (1988). Further, the petitioner for review bears the burden of showing that they have been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986). Findings are binding and not clearly erroneous if supported by "substantial credible evidence in the record." This has been further clarified to mean that a finding is clearly erroneous if a "review of the record Leaves the court with the definite and firm conviction that a nistake has been committed." Wage Appeal v. Board of Personnel https://doi.org/10.1001/10.0001/1 of law is controlling if it is neither arbitrary nor capricious. City of Billings V. Billings Firefighters, 200 Mont. 421, at 430, 551 P.2d 627, at 632 (1982).

The decision of the Flathead County Transportation Committee is affirmed. All of the findings of fact by the Committee are supported by substantial credible evidence in the hearing record. Cheir decision to deny the extension of the bus route is not

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found to be arbitrary nor capricious. They did not abuse their discretion in denying the extension.

Section 20-10-132, MCA, states in pertinent part:

- (1) It shall be the duty of the county transportation committee to:
- (a) establish the transportation service areas within the county, without regard to district boundary lines, which will define the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program;
- (b) approve, disapprove, or adjust the school bus routing submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a)

The statute confers considerable discretion on the transportation committee. In the committee's deliberations prior to a decision, the committee considered extensive testimony of knowledgeable witnesses, questioned them and became familiar with the physical layout of the area. They carefully weighed the concerns of safety regarding visibility, congestion at the current stop, improvements completed, grade, and turnaround for the bus. The record reflects conflicting opinions as to the degree of severity of the factors.

This Superintendent may not substitute her judgment for that of the Committee as to the weight of the evidence. Where the record contains conflicting testimony, credibility is decided by the finder of fact. Frazer School District No. 2 v. Flynn, _______ Mont. _____, 732 P.2d 409, 44 St. Rptr. 248 (1987). The finder of fact in this matter is the Flathead County Transportation

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ommittee. They heard the evidence and concluded that under the xisting conditions, the denial of the extension was in the best nterests of the eligible transportees.

DATED this _____ day of November, 1991.

NANCY KEENAN

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 4th day of November, 1991, true and exact copy of the foregoing <u>Decision and Order</u> was ailed, postage prepaid, to the following:

Jerry and Aileen Brosten 695 Spring Prairie Road Whitefish, MT 59937

William and Lynn Haw 474 Spring Prairie Road Whitefish, MT 59937 Floyd and Sandy Quiram 558 Spring Prairie Road Whitefish, MT 59937

Dorothy Laird Flathead County Supt. 723 5th Ave., Rm. 104 Kalispell, MT 59901

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